



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

**FEB 05 2015**

CERTIFIED MAIL 7010 1670 0000 7048 0289  
RETURN RECEIPT REQUESTED

In Reply: ENF-2-1  
Refer To: Docket No. R9-15-01

Robey W. Estes, Jr.  
President  
Estes Express Lines  
3901 West Broad St.  
Richmond, Virginia 23230-3962

Re: Estes Express Lines Finding and Notice of Violation

Dear Mr. Estes:

Enclosed for your information is a copy of a Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, to Estes Express Lines ("Estes") for violation of the Clean Air Act ("Act"), specifically the California Air Resources Board's ("CARB") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation"). The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

You should be aware that sections 113(a)(1), 113(a)(3) and 113(b) of the Act authorize EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in Estes being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford Estes an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Charles Aldred of the Air Section, Enforcement Division at (415) 972-3986, or have your attorney contact David Kim of the Office of Regional Counsel at (415) 972-3882.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathleen H. Johnson". The signature is fluid and cursive, with the first name "Kathleen" being more prominent.

Kathleen H. Johnson  
Director, Enforcement Division

Enclosure

cc w/enc: CARB

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of	)	
	)	Docket No. R9-15-01
Estes Express Lines	)	
Richmond, Virginia	)	FINDING AND NOTICE
	)	OF VIOLATION
Proceeding Under Section 113(a),	)	
<u>Clean Air Act, as Amended</u>	)	

This Finding and Notice of Violation ("NOV") is issued pursuant to section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA" or the "Act"). This NOV is issued to Estes Express Lines ("Estes") for violations of the Act. Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan ("SIP") of the violations. The authority to issue NOV's has been delegated to the Regional Administrator of EPA, Region 9, and redelegated to the Director of the Enforcement Division for EPA, Region 9.

STATUTORY AND REGULATORY AUTHORITY

A. Clean Air Act

1. Pursuant to section 107(d) of the Act, 42 U.S.C. 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.
2. There are seven AQCRs designated as nonattainment for fine particulate matter (i.e., PM<sub>2.5</sub>) in California, including all of the San Joaquin Valley and the Los Angeles-South Coast Air Basin. *See* 40 C.F.R. § 81.305.
3. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).
4. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

- B. Title 13, Section 2025 of California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles
5. On December 14, 2011, California Air Resources Board (“ARB”) adopted “Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles,” codified at title 13, section 2025 of the California Code of Regulations (the “Truck and Bus Regulation”).
  6. The Truck and Bus Regulation was incorporated into the federal SIP, effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012).
  7. Under section 2025(d)(17) of the Truck and Bus Regulation, “Diesel Particulate Filter” means “an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particulates but permits gases to flow through. . . .”
  8. Under section 2025(d)(18) of the Truck and Bus Regulation, “Diesel Particulate Matter (PM)” means “the particles found in the exhaust of diesel fueled compression ignition engines. . . .”
  9. Under section 2025(d)(28) of the Truck and Bus Regulation, “Fleet” means “one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation.”
  10. Under section 2025(d)(29) of the Truck and Bus Regulation, “Fleet Owner” means, with certain exceptions, “either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle.”
  11. Under section 2025(d)(47) of the Truck and Bus Regulation, “Person” means “an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.”
  12. Under section 2025(d)(48) of the Truck and Bus Regulation, “PM BACT” means “the technology employed on the highest level VDECS for PM or an engine that is equipped with an original equipment manufacturer (OEM) diesel particulate filter and certified to meet 0.01 g/bhp-hr [brake horsepower per hour] certification standard.”
  13. Under section 2025(d)(60) of the Truck and Bus Regulation, “Verified Diesel Emission Control Strategy (VDECS)” means “an emissions control strategy, designed primarily for the reduction of diesel PM emissions, which has been verified pursuant to the Verification Procedures. VDECS can be verified to achieve Level 1 diesel PM reductions

(25 percent), Level 2 diesel PM reductions (50 percent), or Level 3 diesel PM reductions (85 percent). VDECS may also be verified to achieve NOx reductions. . . .”

14. Under section 2025(d)(35) of the Truck and Bus Regulation, “‘Highest Level VDECS’ means the highest level VDECS verified by ARB under its Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines (Verification Procedure), title 13, CCR, sections 2700-2710, for a specific engine as of 10 months prior to the compliance date, which the diesel emission control strategy manufacturer and authorized diesel emission-control strategy dealer agree can be used on a specific engine and vehicle combination without jeopardizing the original engine warranty in effect at the time of application.
  - (A) The highest level VDECS is determined solely on verified diesel PM reductions. Plus designations do not affect the diesel PM level assigned to a VDECS; that is a Level 3 Plus is the same diesel PM level as Level 3.
  - (B) A Level 2 VDECS shall not be considered the highest level VDECS as long as a Level 3 VDECS can be retrofitted on a vehicle in the fleet.
  - (C) Level 1 devices are never considered highest level VDECS for the purpose of this regulation.”
15. The Truck and Bus Regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating (“GVWR”) greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for oxides of nitrogen (“NOx”) and particulate matter (“PM”).
16. Section 2025(g) of the Truck and Bus Regulation requires fleet owners to comply with the following Engine Model Year Compliance Schedule to meet PM BACT for all vehicles in the fleet with a GVWR greater than 26,000 pounds:
  - a. By January 1, 2012, all subject vehicles with an engine model year of 1996 through 1999 must install a PM Filter.
  - b. By January 1, 2013, all subject vehicles with an engine model year of 2000 through 2004 must install a PM Filter.
  - c. By January 1, 2014, all subject vehicles with an engine model year of 2005 through 2006 must install a PM Filter.

This schedule applies to all fleets that have not reported to the ARB to use a flexibility option under section 2025(i) of the Truck and Bus Regulation.

17. Section 2025(x)(1) of the Truck and Bus Regulation provides that “[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation.”
18. Section 2025(x)(2) of the Truck and Bus Regulation provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of Section 2025(s)(4).”
19. Section 2025(x)(3) of the Truck and Bus Regulation provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”
20. Section 2025(s)(4) of the Truck and Bus Regulation provides that motor carriers or brokers must maintain bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.

#### FINDINGS OF FACT

21. Estes is a private, for hire trucking firm that owns and/or operates diesel-fueled vehicles registered to be driven on public highways in all 50 states, including California. Estes has vehicles operating from truck terminals located in various California locations: Bakersfield, Calexico, Chico, City of Industry, Chula Vista, Fontana, Fresno, La Mirada, Rohnert Park, Stockton, Sun Valley, San Leandro, San Jose, Santa Maria, West Sacramento, and Wilmington.
22. On June 16, 2014, EPA, Region IX, issued an information request (the “Information Request”) to Estes pursuant to section 114 of the Act, 42 U.S.C. § 7414. The primary purpose of the Information Request was to determine Estes’ compliance with the Truck and Bus Regulation. The Information Request asked Estes to provide information regarding diesel-fueled vehicles owned, hired, or leased by Estes that have been operated in California since January 1, 2012.
23. On August 1, 2014, Estes submitted its response (the “Response”) to the Information Request to EPA, Region IX.
24. The Response identifies approximately 516 diesel-fueled vehicles with an engine model year prior to 2007 and a GVWR greater than 26,000 pounds that Estes operated in California in calendar years 2012, 2013, or 2014.
25. The Response identifies 64 diesel-fueled vehicles with an engine model year of 1996-1999 and a GVWR greater than 26,000 pounds that Estes operated in California during 2012. The Response also states that these vehicles are not equipped with PM filters. These vehicles are listed in Appendix A of this NOV.

26. The Response identifies 54 diesel-fueled vehicles with an engine model year of 2000-2004 and a GVWR greater than 26,000 pounds that Estes operated in California during 2013. The Response also states that these vehicles are not equipped with PM Filters. These vehicles are listed in Appendix B of this NOV.
27. The Response identifies 37 diesel-fueled vehicles with an engine model year of 2005-2006 and a GVWR greater than 26,000 pounds that Estes operated in California during 2014. The Response also states that these vehicles are not equipped with PM Filters. These vehicles are listed in Appendix C of this NOV.
28. The Response indicates that Estes hired at least eight (8) motor carriers between January 1, 2012 and June 16, 2014 but failed to verify the compliance of these companies with the Truck and Bus Regulation.

#### FINDINGS OF VIOLATION

29. Estes is a "Person" as that term is defined under section 2025(d)(47) of the Truck and Bus Regulation.
30. Estes has a "Fleet" of vehicles as that term is defined under section 2025(d)(28) of the Truck and Bus Regulation, and is a "Fleet Owner" as that term is defined under section 2025(d)(29) of the Truck and Bus Regulation.
31. Estes did not report to ARB to use a flexibility option under section 2025(i) of the Truck and Bus Regulation and is thus subject to the requirements of the Engine Model Year Compliance Schedule set forth in section 2025(g) of the Truck and Bus Regulation.
32. Estes violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least 64 diesel-fueled vehicles that it owned and operated in California during 2012.
33. Estes violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least 54 diesel-fueled vehicles that it owned and operated in California during 2013.
34. Estes violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least 37 diesel-fueled vehicles that it owned and operated in California during 2014.
35. Estes violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that each of the eight motor carriers it hired between January 1, 2012 and June 16, 2014 was in compliance with the Truck and Bus Regulation.
36. Estes violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.

## NOTICE OF VIOLATION

Notice is given to Estes that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Estes violated section 110 of the Act and section 2025(x)(1) of the Truck and Bus Regulation in the California State Implementation Plan, as set forth in the Finding and Notice of Violation.

## ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

42 U.S.C. § 7413(a)(1); 40 C.F.R. Part 19.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after the date of issuance of this NOV, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

## PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any creditable evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where



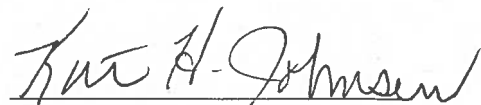
the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

#### OPPORTUNITY FOR CONFERENCE

Estes may, upon request, confer with EPA. The conference will enable Estes to present evidence bearing on the finding of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Estes has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

David H. Kim  
Office of Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3882

DATED: 2/5/15



Kathleen H. Johnson  
Director, Enforcement Division

## APPENDIX A

Estes diesel-fueled vehicles with engine model year of 1996-1999 that failed to comply with section 2025(g) of the Truck and Bus Regulation, listed by Vehicle Identification Numbers as provided by Estes:

1	2HSFPAHN0WC063930
2	2HSFPAHN3WC063842
3	2HSFPAHN3WC063923
4	2HSFPAHN9WC063893
5	1FUBA5CG02LJ37672
6	1FUBA5CG12LJ37678
7	1FUBA5CG32LJ37679
8	1FUBA5CG72LJ37670
9	1FUBA5CG82LJ37676
10	1FUBA5CG82LJ37760
11	1FUBA5CG92LJ37766
12	1FUBA5CGX2LJ37677
13	2HSFRAMR4WC060922
14	2HSFRAMR6WC060890
15	2HSFRAMR8WC060941
16	1FUWHJCB87YHF69233
17	1FUWHJCB0YHF69204
18	1FUWHJCB0YHF69235
19	1FUWHJCB2YHF69222
20	1FUWHJCB2YHF69995
21	1FUWHJCB3YHF69214
22	1FUWHJCB3YHF69231
23	1FUWHJCB3YHF69987
24	1FUWHJCB3YHF69990
25	1FUWHJCB6YHF69224
26	1FUWHJCB7YHF69989
27	1FUWHJCB8YHF69211
28	1FUWHJCB9YHF69220
29	1FUWHJCB9YHF69234
30	1FUWHJCBXYHF69212
31	1FUWTWDB2YHF69997
32	1FUWTWDB3YHF69238
33	1FUWTWDB7YHF69999
34	1FUWTWDB7YHF70005
35	1FUWTWDB9YHF69244
36	1HSHBATN01H332458
37	1HSHBATN01H332461
38	1HSHBATN0YH244505

39	1HSHBATN0YH332440
40	1HSHBATN1YH332432
41	1HSHBATN21H332459
42	1HSHBATN21H332462
43	1HSHBATN2YH332438
44	1HSHBATN2YH332441
45	1HSHBATN3YH244501
46	1HSHBATN41H332446
47	1HSHBATN41H332463
48	1HSHBATN4YH244507
49	1HSHBATN5YH244502
50	1HSHBATN5YH332434
51	1HSHBATN61H332447
52	1HSHBATN61H332464
53	1HSHBATN6YH244508
54	1HSHBATN6YH332443
55	1HSHBATN81H332448
56	1HSHBATN8YH332444
57	1HSHBATN91H332457
58	1HSHBATN9YH244499
59	1HSHBATN9YH332436
60	1HSHBATNX1H332449
61	1HSHBATNXYH332445
62	1M1AA13Y6XW106629
63	1M1AA13Y6XW106730
64	2HSFPAHN4WC063929

## APPENDIX B

Estes diesel-fueled vehicles with engine model year of 2000-2004 that failed to comply with section 2025(g) of the Truck and Bus Regulation, listed by Vehicle Identification Numbers as provided by Estes:

1	1HSHBAHN51H332478
2	1HSHBAHN91H332466
3	1M1AE02Y93W001268
4	2FWJA3AS54AM92487
5	2FWJA3AS94AM92489
6	1HSHWAHN35J005709
7	1HSHWAHN55J005100
8	1HSHWAHN65J005705
9	1HSHWAHN75J005163
10	1HSHWAHN85J005706
11	1HSHWAHN85J005740
12	1HSHWAHN95J005116
13	1HSHWAHN95J005701
14	1HSHXAHR25J036904
15	1HSHXAHR35J053467
16	2FWBA2CK05AV13954
17	2FWBA2CK06AV14006
18	2FWBA2CK15AV13963
19	2FWBA2CK16AV13978
20	2FWBA2CK16AV13981
21	2FWBA2CK26AV13990
22	2FWBA2CK26AW40528
23	2FWBA2CK36AV13979
24	2FWBA2CK36AV13982
25	2FWBA2CK36AV13996
26	2FWBA2CK45AV13956
27	2FWBA2CK46AV13974
28	2FWBA2CK46AV13991
29	2FWBA2CK46AW40532
30	2FWBA2CK56AV13983
31	2FWBA2CK65AV13960
32	2FWBA2CK66AV13989
33	2FWBA2CK66AV13992
34	2FWBA2CK66AV14012
35	2FWBA2CK75AV13966
36	2FWBA2CK76AV13998
37	2FWBA2CK85AV13961
38	2FWBA2CK96AV14005

39	2FWBA2CKX5AV13959
40	2FWBA2CKX6AV13994
41	2FWBA3DA05AN94594
42	2FWJA3CK65AV13815
43	1HSHWAHN05J005733
44	1HSHWAHN75J005163
45	1HSHWAHN85J005706
46	1HSHXAHR05J036884
47	2FWBA2CK05AV13954
48	2FWBA2CK06AV14006
49	2FWBA2CK15AV13963
50	2FWBA2CK36AV13996
51	2FWBA2CK46AW40532
52	2FWBA2CK65AV13960
53	2FWBA2CK66AV14012
54	2FWBA2CKX5AV13959

## APPENDIX C

Estes diesel-fueled vehicles with engine model year of 2005-2006 that failed to comply with section 2025(g) of the Truck and Bus Regulation, listed by Vehicle Identification Numbers as provided by Estes:

1	1HSHXAHR86J208449
2	1M1AK02Y05N001256
3	1M1AK02Y25N001257
4	1M1AK02Y25N001274
5	1M1AK02Y95N001255
6	2FWBA2CV16AV14185
7	2FWBA2CV16AV14218
8	2FWBA2CV25AV14131
9	2FWBA2CV35AV14140
10	2FWBA2CV96AV14189
11	1HSHWAHN07J012166
12	1HSHWAHN07J364017
13	1HSHWAHN17J363944
14	1HSHWAHN57J364028
15	1HSHWAHNX7J364011
16	1M1AK02Y16N004071
17	1M1AK02Y16N004121
18	1M1AK02Y66N004101
19	1M1AK02Y86N004083
20	2FWBA2CV36AW40712
21	2HSCEAPR37C364061
22	2HSCEAPR47C364036
23	2HSCEAPR57C364059
24	2HSCEAPR67C364068
25	2HSCEAPR87C364041
26	2HSCEAPRX7C364056
27	2HSCNAPR07C412499
28	4V4NC9TH07N428543
29	2HSCEAPR07C364082
30	2HSCEAPR37C364061
31	2HSCEAPR47C364036
32	2HSCEAPR57C364059
33	2HSCEAPR67C364068
34	2HSCEAPR87C364041
35	2HSCEAPRX7C364056
36	2HSCNAPR07C412499
37	4V4NC9TH07N428543